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No. 03-234

Supreme Court, U.S.
FILED
SEP 25 2003
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

DR. SAKHARAM D. MAHURKAR,
Petitioner,

v.

NIRO, SCAVONE, HALLER & NIRO AND C.R. BARD, INC.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

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REPLY BRIEF FOR THE PETITIONER

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1. Most of the Brief in Opposition is devoted to arguing that petitioner is seeking to relitigate issues decided by previous litigation, specifically issues concerning whether petitioner settled with Bard.[1] Respondent is, of course, free to make such an argument. But the argument should be made to the state court that is hearing petitioner's malpractice claim—not to this Court, and not to the federal district court. If respondent's preclusion argument is as strong as

[1] Respondent appears to suggest that petitioner has previously sought review in this Court of the issues presented in the petition. See Br. in Op. 2. This is false; the certiorari petition to which respondent refers was filed in the *Bard* litigation and did not present any of the issues we raise here. Indeed, it could not have raised the issues presented by the petition, which entered the case only by virtue of the federal district court's grant of an injunction.

respondent suggests, respondent should have done what a state court defendant routinely does when it wishes to raise a federal defense—make its arguments in the ongoing state court proceedings.

Respondent defends the district court's injunction by asserting that "it simply makes no sense to permit relitigation in state court of issues admittedly decided in federal court." Br. in Op. 9. This cavalier attitude toward fundamental principles of judicial federalism underlies respondent's entire position. The question is not whether "to permit relitigation"; it is whether the state court or the federal court is to rule on the validity of a preclusion defense, when that defense is offered in state court proceedings. And of course it does "make sense" to permit the state court resolve that issue: It is far less disruptive of the state court litigation to allow the state court to determine whether and how the result of previous litigation affects petitioner's malpractice claim. Instead, under the decision of the courts below, the state court must now accommodate itself to an injunction entered by a federal court that, of necessity, lacks a complete understanding of the state law claim. That is precisely the kind of interference with state court proceedings that the Anti-Injunction Act is designed to prevent.

2. Respondent makes no effort to explain how it is seeking to "protect or effectuate [a] judgment" of a federal court—nor could it, because it was never a party to federal litigation and never obtained a federal judgment in its favor. Respondent cites (Br. in Op. 7-8) this Court's language, in *United States v. New York Telephone Co.*, 434 U.S. 159, 172 (1977), suggesting that the Anti-Injunction Act allows a federal court to "effectuate and prevent the frustration of orders it has previously issued"—but respondent never identifies any order of any federal court that could possibly be "frustrat[ed]" by petitioner's malpractice action.

Similarly, respondent quotes at length from Third Circuit decisions discussing the All Writs Act, 28 U.S.C. 1651. See Br. in Op. 8-9, quoting *Carlough v. Amchem Products, Inc.*, 10 F. 3d 189, 201 n.9 (3d Cir. 1993) and *In re Prudential Ins. Co. Sales Practice Litig.*, 261 F. 3d 355, 365 (3d Cir. 2001). Respondent's reliance on the All Writs Act betrays the weakness of its position: As this Court has recently reiterated, the All Writs Act does not confer jurisdiction, and it does not authorize a court to disregard the limitations imposed by other statutes—in this case, by the Anti-Injunction Act. See *Syngenta Crop Protection, Inc. v. Henson*, 537 U.S. 28, 32-33 (2002), quoting *Pennsylvania Bureau of Correction v. United States Marshals Service*, 474 U.S. 34, 43 (1985).

3. Finally, respondent does not suggest that the decision below is idiosyncratic, or is unworthy of review because the court of appeals' order is unpublished. On the contrary, respondent asserts (Br. in Op. 9) that some other courts of appeals have interpreted the Anti-Injunction Act in the same way as the courts below. Because this interpretation of the Anti-Injunction Act, which has gained a foothold in the lower courts, is both erroneous and destructive of basic principles of federalism, this Court should grant review to correct it.

For these reasons and the reasons stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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September 25, 2003